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0 Attorneys for Plaintiff
Salient Arms International, Inc.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

SALIENT ARMS INTERNATIONAL, INC.,
a Nevada corporation,

Case No.:

Plaintiff,

V.

THE BUREAU OF ALCOHOL, TOBACCO,
FIREARMS AND EXPLOSIVES; JASON K.
WILLIAMS, in his official capacity as an
Industry Operations Investigator for the
Bureau of Alcohol, Tobacco, Firearms, and
Explosives; KYLE LALLENSACK, in his
capacity as Chief of the Firearms Industry
Program Branch of the Bureau of Alcohol,
Tobacco, Firearms and Explosives; ROGER
M. ROOT, in his capacity as Director of
Industry Operations for the San Francisco
Field Division of the Bureau of Alcohol,
Tobacco, Firearms and Explosives; DOES I
through X; and ROE ENTITIES and
AGENCIES I through X,

COMPLAINT

Defendants.

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199 NORTH ARROYO GRANDE BLVD., SUITE
HENDERSON, NEVADA 89014
(702) 434-3444 FAX (702) 434-3739

COMPLAINT

2 Plaintiff, SALIENT ARMS INTERNATIONAL, INC., hereby files this Complaint
3 against Defendants, THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND
4 EXPLOSIVES; JASON K. WILLIAMS, in his official capacity as an Industry Operations
5 Investigator for the Bureau of Alcohol, Tobacco, Firearms, and Explosives; KYLE
6 LALLENSACK, in his capacity as Chief of the Firearms Industry Program Branch of the Bureau
7 of Alcohol, Tobacco, Firearms and Explosives; ROGER M. ROOT, Director of Industry
8 Operations for the San Francisco Field Division of the Bureau of Alcohol, Tobacco, Firearms
9 and Explosives; DOES I through X; and ROE ENTITIES and AGENCIES I through X, and
10 allege as follows:

JURISDICTION AND VENUE

12 1. This Court has jurisdiction over the subject matter of this action pursuant to 28
13 U.S.C. § 1331 (federal question jurisdiction) and 5 U.S.C. § 702 (providing for judicial review
14 of agency action under the Administrative Procedure Act (5 U.S.C. §§ 551 *et seq.*)).

15 2. Venue in this judicial district is proper under 28 U.S.C. § 1391(e)(1)(B) because
16 a substantial part of the events or omissions giving rise the claim occurred in this judicial district.
17 Venue in this judicial district is also proper under 28 U.S.C. § 1391(e)(1)(C) because Plaintiff is
18 a corporation formed under the laws of the State of Nevada, with its principal place of business
19 located in Nevada.

PARTIES

21 3. Plaintiff, Salient Arms International, Inc., is a Nevada corporation with its
22 principal place of business located at 6713 S. Eastern Avenue, Las Vegas, Nevada 89119
23 (hereinafter “Plaintiff” or “SAI”).

24 4. Plaintiff, Salient Arms International, Inc. is a Nevada corporation with its
25 principal place of business located at 6713 S. Eastern Avenue, Las Vegas, Nevada 89119 and is
26 engaged in, and holds the requisite federal licenses for, manufacturing and modifying firearms
27 (hereinafter referred to as the “Plaintiff” or “SAI”).

28 | ...

1 5. Defendant, The Bureau of Alcohol, Tobacco, Firearms and Explosives
2 (hereinafter “BATFE”), an arm of the Department of Justice, is responsible for the investigation
3 and prevention of federal offenses involving the use, manufacture and possession of firearms.
4 The BATFE also regulates the sale, possession, and transportation of firearms and ammunition
5 in interstate commerce. The BATFE also oversees licensing of individuals and entities who are
6 engaged in the manufacturing of firearms.

7 6. Defendant, Jason K. Williams, is, or at all times relevant hereto was, acting in his
8 official capacity as an Industry Operations Investigator for the BATFE (hereinafter “Mr.
9 Williams”).

10 7. Defendant, Kyle Lallensack, is, or at all times relevant hereto was, acting in his
11 official capacity as the Chief of Firearms Industry Programs Branch of the BATFE (hereinafter
12 "Chief Lallensack").

13 8. Defendant, Roger M. Root, is, or at all times relevant hereto was, Director of
14 Industry Operations for the San Francisco Field Division of BATFE (hereinafter "Director
15 Root").

16 9. Plaintiff does not, at present, know the true names and identities of those
17 Defendants, both individual and governmental entities, agencies or branches, DOES I through
18 X; and ROE ENTITIES and AGENCIES I through X, but are informed and believed they are
19 acting under the authority and direction of the aforementioned Defendants whose identities are
20 currently known to Plaintiff. Plaintiff prays for leave to amend this Complaint to insert their true
21 names and identities with appropriate allegations when the same become known.

22 10. At all relevant times alleged herein, Defendants were acting in their official
23 capacity as the lawful agents and representatives of the BATFE and thus are proper parties
24 pursuant to 5 U.S.C. § 701(b)(1)(e).

OVERVIEW

26 11. At issue in this matter is the interpretation of The Gun Control Act of 1968, 18
27 U.S.C. § 921, *et seq.* (hereinafter “GCA”), its associated regulations (27 C.F.R. § 478, *et seq.*)
28 and the application thereof.

1 12. On or around December 18, 2018, Defendants, via letter, notified Plaintiff of a
 2 determination that constituted an “agency action” pursuant to 5 U.S.C. § 701(b)(2) and § 551(13)
 3 (hereinafter the “Agency Action”). The Agency Action determined that certain work that
 4 Plaintiff performs on other manufacturers’ firearms constitutes “manufacturing” under the GCA.

5 13. By virtue of the Agency Action that deemed certain work Plaintiff performs on
 6 other manufacturers’ firearms to constitute “manufacturing”, Plaintiff has suffered a legal wrong.
 7 The Agency Action also has adversely affected and aggrieved Plaintiff, thus providing
 8 jurisdiction to review the Agency Action pursuant to 5 U.S.C. § 702.

9 14. Plaintiff, by way of this Complaint, seeks judicial review of the Agency Action
 10 pursuant to 5 U.S.C. § 702 and a determination that the Agency Action is unlawful for the reasons
 11 set forth in this Complaint. Plaintiff further seeks a declaration from this Court that the work it
 12 performs on other manufacturers’ firearms, as will be discussed in more detail hereafter, does
 13 not constitute “manufacturing” under the GCA.

14 15. This is not an action for monetary damages.

FACTUAL ALLEGATIONS

16 16. Plaintiff holds a Type 07 Federal Firearms License (“FFL”) which allows
 17 Plaintiff to be a “Manufacturer of Firearms Other Than Destructive Devices”.

18 17. Plaintiff also holds a Type 01 FFL, which allows Plaintiff to be a “Dealer in
 19 Firearms Other Than Destructive Devices.”

20 18. Plaintiff is federally licensed to perform “gunsmithing” on firearms.

21 19. Plaintiff is also federally licensed to “manufacture” firearms.

22 20. As the holder of multiple FFL’s, Plaintiff is subject to inspection by the BATFE.

23 21. As part of its business activities, Plaintiff performs work on fully functional and
 24 complete firearms manufactured by Glock, Smith & Wesson, Arsenal Firearms, Benelli,
 25 Remington, Breda, and other licensed firearms manufacturers, excluding the Plaintiff’s own
 26 firearms (hereinafter collectively “Other Manufacturers”).¹

27
 28 ¹ Plaintiff “manufactures” its own line of firearms (i.e. a pistol, termed the “BLU”). None of the firearms that Plaintiff manufactures bearing only the name “Salient Arms” or “Salient Arms International” are at issue herein.

1 22. The work Plaintiff performs that is at issue herein relates solely to the work
2 performed on Other Manufacturers' firearms.

3 23. Plaintiff purchases complete and fully operational Other Manufacturers' firearms
4 in question from licensed firearms dealers, distributors, and Other Manufacturers.

5 24. These firearms, manufactured by the Other Manufacturers, are complete as to all
6 parts and are suitable for use prior to Plaintiff performing any work on them.

7 25. Upon information and belief, the Other Manufacturers of the firearms have filed
8 reports with the BATFE identifying the firearms as having been manufactured by them.

9 26. The Other manufacturers of the firearms have marked the firearms with the:
10 name, city, and state of the manufacturer; model; caliber; and non-repeating serial numbers in
11 accordance with applicable law. *See* 27 C.F.R. § 478.92.

12 27. The firearms in question are considered by BATFE to be complete firearms in all
13 regards.

14 28. On or about May 1, 2018, Mr. Williams, in his official capacity as an Industry
15 Operations Investigator for the BATFE began a routine compliance audit of Plaintiff's licensed
16 business premises.

17 29. By e-mail dated June 20, 2018, Mr. Williams, in his official capacity as an
18 Industry Operations Investigator for the BATFE directed Plaintiff to submit a written request to
19 the Firearms Industry Programs Branch of the BATFE for a determination as to whether the
20 work Plaintiff performs on Other Manufacturers' firearms constitutes "gunsmithing" or
21 "manufacturing". A true and correct copy of Mr. Williams' e-mail, dated June 20, 2018, is
22 attached hereto as **Exhibit 1**.

23 30. By letter dated August 29, 2018, Plaintiff complied with Mr. William's official
24 directive; and formally requested that the Firearms Industry Programs Branch ("FIPB") of the
25 BATFE make a determination that the work Plaintiff performs on Other Manufacturers' firearms
26 constitutes gunsmithing, and not manufacturing under the GCA and other applicable legal
27 authority. A true and correct copy of Plaintiff's letter dated August 29, 2018 is attached hereto
28 as **Exhibit 2**.

1 31. Plaintiff was notified of the Agency Action by letter, dated December 18, 2018,
2 signed by Chief Lallensack, in his official capacity as the Chief of the FIPB division of the
3 BATFE determined that in certain instances the work Plaintiff performs on Other Manufacturers'
4 firearms constitutes the "manufacturing of firearms" under the GCA. A true and correct copy of
5 Chief Lallensack's letter dated December 18, 2018 – the Agency Action - is attached hereto as
6 **Exhibit 3.**

Exhibit 3.

⁷ 32. Director Root is referenced at the bottom of the Agency Action. See Ex. 3 at p. 5.

8 33. Plaintiff contends that Defendants' determinations and conclusions in the Agency
9 Action are arbitrary, capricious, an abuse of discretion, contrary to law; and therefore incorrect.

10 34. Plaintiff contends that Defendants' determinations and conclusions in the Agency
11 Action are contrary to constitutional right, power, privilege, and/or immunity.

12 35. Plaintiff contends that Defendants' determinations and conclusions in the Agency
13 Action are in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.

14 36. Plaintiff contends that Defendants' determinations and conclusions in the Agency
15 Action were made without observation of procedure required by law.

16 37. Plaintiff contends that Defendants' determinations and conclusions in the Agency
17 Action are unwarranted by the facts and said facts are subject to a trial *de novo* by this Court.

FIRST CLAIM FOR RELIEF

VIOLATION OF THE APA (5 U.S.C. § 702(2)(A)-(D))

(Defendants' Definition and Applications of the Term "Manufacturing" are unlawful)

21 38. A reviewing court may “hold unlawful and set aside agency action . . . found to
22 be—(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
23 (B) contrary to constitutional right, power, privilege or immunity; (C) in excess of statutory
24 jurisdiction, authority or limitations, or short of statutory right; [or] (D) without observance of
25 procedure required by law...” 5 U.S.C. § 706(2)(A)-(D).

39. The GCA does NOT statutorily define the term “manufacturing” as it relates to
firearms.

28

40. The GCA is unconstitutionally vague as it relates to the definition of the “manufacturing” of firearms.

41. Upon information and belief, no other United States statute defines the term “manufacturing” as it relates to firearms.

42. The definition of “manufacturing” adopted by Defendants, and their application thereof, is arbitrary, capricious, an abuse of discretion, and/or otherwise not in accordance with law.

43. The definition of “manufacturing” adopted by Defendants, and their application thereof, is contrary to their constitutional right, power, privilege, and/or immunity.

44. The definition of "manufacturing" adopted by Defendants, and their application thereof, is in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.

45. The definition of "manufacturing" adopted by Defendants, and their application thereof, was made without observation of procedure required by law.

46. As the direct and proximate result of Defendants' determination that the work Plaintiff performs on Other Manufacturers' firearms constitutes "manufacturing", Plaintiff has suffered a legal wrong, adversely affected or aggrieved, and is entitled to judicial review of said determination.

47. The definition of “manufacturing” adopted by Defendants, and their application thereof, is unwarranted by the facts and the Agency Action is not in accordance with law, in violation of the APA.

SECOND CLAIM FOR RELIEF

VIOLATION OF THE APA (5 U.S.C. § 702(2)(A)-(D))

(Defendants' Definition and Applications of the Term "Gunsmithing" are unlawful)

48. The GCA also does NOT statutorily define the term “gunsmithing” as it relates to firearms.

49. The GCA is unconstitutionally vague as it relates to the definition of the “gunsmithing” of firearms.

• • •

1 50. Upon information and belief, no other United States statute defines the term
2 “gunsmithing” as it relates to firearms.

3 51. The definition of “gunsmithing” adopted by Defendants, and their application
4 thereof, is arbitrary, capricious, an abuse of discretion, and/or otherwise not in accordance with
5 law.

6 52. The definition of “gunsmithing” adopted by Defendants, and their application
7 thereof, is contrary to their constitutional right, power, privilege, and/or immunity.

8 53. The definition of “gunsmithing” adopted by Defendants, and their application
9 thereof, is in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.

10 54. The definition of “gunsmithing” adopted by Defendants, and their application
11 thereof, was made without observation of procedure required by law.

12 55. The definition of “gunsmithing” adopted by Defendants is unwarranted by the
13 facts and the Agency Action is not in accordance with law, in violation of the APA.

14 56. As the direct and proximate result of Defendants’ determination that the work
15 Plaintiff performs on Other Manufacturers’ firearms constitutes “manufacturing” and not
16 “gunsmithing”, Plaintiff has suffered a legal wrong, adversely affected or aggrieved, and is
17 entitled to judicial review of said determination.

18 57. The definition of “gunsmithing” adopted by Defendants, and their application
19 thereof, is unwarranted by the facts and the Agency Action is not in accordance with law, in
20 violation of the APA.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, SALIENT ARMS INTERNATIONAL, INC, hereby requests relief against Defendants, THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES; JASON K. WILLIAMS, in his official capacity as an Industry Operations Investigator for the Bureau of Alcohol, Tobacco, Firearms, and Explosives; KYLE LALLENSACK, in his capacity as Chief of the Firearms Industry Program Branch of the Bureau of Alcohol, Tobacco, Firearms and Explosives; ROGER M. ROOT, Director of Industry Operations for the San Francisco Field Division of the Bureau of Alcohol, Tobacco, Firearms and Explosives, as follows:

- (a) A declaratory judgment declaring Defendants' determination that the work Plaintiff performs on other manufacturers' firearms constitutes "manufacturing" under the GCA and all other applicable law to be invalid, null, void, and of no further legal effect;
 - (b) Enjoining Defendants from enforcing their administrative determination dated December 18, 2018 *pendente lite*;
 - (c) A declaratory judgment declaring that the work Plaintiff performs on other manufacturers' firearms constitutes "gunsmithing".
 - (d) Awarding Plaintiff's attorneys' fees, interest and cost of suit; and
 - (e) Any and all other relief that the Court may deem appropriate, equitable, or just.

Dated this 17th day of January 2019.

LAW OFFICE OF HAYES & WELSH

/s/ Larson A. Welsh
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